



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: ITECH, Inc.; Alaska Development Consultants,  
Inc.; Ocean Technology, Ltd.  
File: B-231693, B-231693.2, B-231693.3  
Date: September 20, 1988

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### DIGEST

1. Contracting agency acted properly in excluding from competitive range a proposal which was marginally acceptable on technical grounds and significantly higher in price relative to other proposals and as a result has no reasonable chance at award.
2. Contracting agency acted properly in selecting a technically superior but higher priced proposal instead of protester's lower priced, technically inferior proposal where request for proposals specified that technical factors were considerably more important than price.
3. Protesters fail to show that procurement is tainted where there is no evidence in the record that the award was the result of favoritism or other improper actions by the contracting officials. Personal relationship between awardee and a member of the evaluation board does not create an appearance of impropriety warranting conclusion that procurement was necessarily tainted, particularly where the group of individuals involved in the services called for by the solicitation (land surveys in Alaska) is small, the alleged "gratuities" given by the awardee were modest in nature (two tickets to a local social function and a few pounds of coffee), and there is no evidence that the award decision was improperly influenced in any way.

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### DECISION

ITECH, Inc., Alaska Development Consultants, Inc. (ADC), and Ocean Technology, Ltd. protest the award of a contract to North Slope Joint Venture (NSJV) under request for proposals (RFP) No. YA551-RFP8-340028, issued by the Bureau of Land Management (BLM), Department of the Interior, for cadastral surveys of certain properties on the North Slope, Alaska. All three protesters contend that the procurement was tainted and the award should be set aside because BLM

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employees involved in the evaluation of proposals accepted gratuities from NSJV or otherwise were biased in favor of NSJV. ADC and Ocean Technology also challenge BLM's evaluation of their technical proposals. We deny the protests.

The RFP, issued on March 17, 1988, called for award of a fixed-price contract for all labor, materials and other resources necessary to perform cadastral surveys of certain properties in Alaska. The RFP set out the following four technical evaluation criteria totaling 100 points: technical approach (50 points); personnel (25 points); experience and past performance (15 points); and quality control (10 points). (As discussed below, although the evaluation panel actually scored the proposals on the basis of 1,000 total points, the relative values of the evaluation criteria were the same as if a 100-point total had been used.)

The RFP also provided that the offerors' price proposals would be evaluated to determine their reasonableness for the effort proposed and the offerors' understanding of the level of effort needed to successfully complete the project. With regard to the relative weight of technical considerations and price, the RFP stated as follows:

"Of those proposals found to be technically acceptable or technically acceptable with modification and whose cost proposals have been determined to be reasonable, a final numerical score will be established by weighing the technical score at 65% and the price at 35%."

Eight offers were received by the April 19 due date. In evaluating the proposals, the agency first separately scored each offeror's technical and price proposals, then calculated a total combined score based on the formula set out in the RFP by weighing the technical score as 65 percent and the price score as 35 percent of a total score of 1,000 points. Based on the initial evaluation, three of the eight offerors, including ADC, were excluded from the competitive range. Discussions then were held with the remaining five offerors, including NSJV, ITECH and Ocean Technology, followed by submission of best and final offers (BAFOs). The agency then calculated a final combined score for each offeror based on review of their BAFOs. NSJV received the highest score (881.9 points), followed by Ocean Technology (874.8); ITECH received the second lowest score (836.8). Award then was made to NSJV as the highest-ranked offeror.

### ADC's Exclusion From the Competitive Range

ADC challenges BLM's decision to eliminate it from the competitive range, arguing generally that BLM improperly evaluated its technical proposal and failed to take into account its price relative to the awardee's price. We see no basis to object to BLM's decision.

Based on its evaluation, BLM concluded that ADC's technical proposal was acceptable with modifications. BLM ranked ADC sixth of the eight offers received, with a score of 681 points; the five higher ranked firms received technical scores ranging from 745 to 942.5 points. ADC also submitted the second highest proposed price (\$1,094,952), only slightly below NSJV's highest priced offer (\$1.1 million). When ADC's combined technical/price score was calculated, ADC's score was by far the lowest of the six offerors initially considered technically acceptable or susceptible to being made acceptable; ADC received a total score of 686 points, while the other five offerors' total scores ranged within 30 points from 834 to 864 points. Based on the combined scores, BLM concluded that, while ADC's proposal was marginally acceptable, it was so technically inferior and out of line as to price relative to the other offers that it had no reasonable chance of being selected for award. As a result, BLM eliminated ADC from the competitive range.

ADC first challenges the agency's technical evaluation of its proposal, arguing generally that its technical score is too low. In response to this contention, the agency in its report on the protest discusses the various features of ADC's technical proposal which in BLM's view justified its lower rating relative to the other offerors. For example, BLM states that ADC's technical proposal lacked detail in various areas and merely restated the requirements of the RFP in other areas; failed to discuss the methods to be used for establishing the corners to be surveyed on the ground; and was over-staffed relative to the government estimate. ADC does not respond to the specific shortcomings in its proposal discussed by BLM, and its general allegation challenging the technical evaluation is not sufficient to show that it was unreasonable. Accordingly, we see no basis to question BLM's evaluation of ADC's technical proposal.

ADC also argues that since BLM found its initial technical proposal susceptible to being made acceptable, ADC should have been included in the competitive range and given an opportunity to revise its proposal. We disagree. In determining whether to include a proposal in the competitive range, a contracting agency may compare the initial proposal

evaluation scores and the offeror's relative standing among its competitors. Jack Faucett Associates, B-224414, Sept. 16, 1986, 86-2 CPD ¶ 310. A proposal found technically acceptable as submitted need not be included in the competitive range if, relative to the other acceptable offerors, it is determined to have no reasonable chance for award. Systems Integrated, B-225055, Feb. 4, 1987, 87-1 CPD ¶ 114. Here, ADC's technical score was considerably lower than those of the other offerors found technically acceptable, and its price was only slightly lower than the highest priced proposal. Under these circumstances, we see no basis to question BLM's determination that ADC had no reasonable chance at award and thus should be excluded from the competitive range. Emerald Maintenance, Inc., B-221353, Apr. 1, 1986, 86-1 CPD ¶ 308.

#### Evaluation of Ocean Technology

Of the six initial offers considered technically acceptable or susceptible to being made acceptable, Ocean Technology ranked fifth with 745 points; NSJV, the highest ranked technically, received 942.5 points. Ocean Technology's proposed price was the lowest of the six offerors (\$767,649); NSJV's was the highest (\$1.1 million). Based on the technical/price formula set out in the RFP, Ocean Technology overall ranked fifth of the six offerors with a combined initial score of 834 points; NSJV ranked third with 855 points.

After submission of BAFOs, Ocean Technology's technical score increased from 745 to 807.5 points, still considerably below NSJV, whose technical score increased from 942.5 to 947.5 points. Ocean Technology remained the lowest-priced offeror based on the BAFOs (\$695,502) and accordingly received the maximum number of points available for price. NSJV remained the highest priced offeror (\$915,000) and received the lowest number of points for price. After the combined technical/prices scores were calculated, NSJV received the highest score, 881.9 points; Ocean Technology had the next highest total score, 874.8 points.

Ocean Technology challenges the technical evaluation of its proposal and contends that it was entitled to award based on the technical merit of its proposal and the fact that it submitted the lowest priced offer. We find these arguments to be without merit. In a negotiated procurement, there is no requirement that award be made on the basis of lowest proposed price; an agency properly may decide to reject a lower priced proposal where a technical justification exists for accepting a higher priced proposal and the RFP does not require award to the lowest priced, technically acceptable

proposal. Kay and Associates, Inc., B-228434, Jan. 27, 1988, 88-1 CPD ¶ 81. Here, as discussed above, the RFP clearly stated that technical considerations, assigned 65 percent of the total weight, were significantly more important than price, assigned 35 percent. As a result, any advantage Ocean Technology derived from being the lowest-priced offeror was properly offset by NSJV's technical superiority.<sup>1/</sup>

Further, while Ocean Technology objects generally to BLM's evaluation of its technical proposal, like ADC it fails to respond to the specific factors discussed in detail in BLM's report. For example, BLM concluded that Ocean Technology's narrative plan of survey was difficult to interpret, its discussion of methods, procedures, requirements and specifications was incomplete, and its discussion of logistics lacked detail. Since Ocean Technology has not addressed BLM's specific conclusions, we see no basis to question BLM's evaluation of Ocean Technology's technical proposal.

#### Alleged improprieties in the procurement

All three protesters argue that the BLM officials involved in the award decision were improperly biased in favor of NSJV as a result of their personal relationships with the principals of NSJV and alleged acceptance of gratuities from NSJV. As discussed below, we find that there is no evidence in the record to support the protesters' contention that the award to NSJV resulted from bias or other improper actions on the part of the contracting officials.

ITECH argues that the procurement was tainted by gratuities given by one of the principals of NSJV to BLM employees in violation of the prohibition in 18 U.S.C. § 201(c)(1) (Supp. IV 1986) on gratuities to government employees in connection with their official duties.<sup>2/</sup> In support of its

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<sup>1/</sup> To the extent that Ocean Technology challenges the evaluation scheme itself, the protest is untimely since it was not raised before the closing date for initial proposals. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988).

<sup>2/</sup> In its initial submission, ITECH also argued that BLM failed to conduct meaningful discussions with it. BLM contested ITECH's contention in its report on the protest. ITECH did not respond to BLM's position in its comments on the report, however, and, as a result, we regard this ground of protest as abandoned and we will not consider it. XMCO, Inc., B-228357, Jan. 26, 1988, 88-1 CPD ¶ 75.

contention, ITECH states that some members of NSJV are former BLM employees, one of whom has kept a close association with his former colleagues at BLM. ITECH states that based on information from unspecified sources, this member of NSJV "regularly provides gratuities to BLM employees including tickets to social and sporting events and special price breaks on surplus equipment." Beyond its bare allegation, however, ITECH submitted no evidence supporting its position.

In response to ITECH's allegation, BLM submitted affidavits from the four members of the evaluation team denying that they received gratuities or other favors from NSJV. The chairman of the board further states that he has maintained a friendship with one of the principals in NSJV since that individual left BLM. The chairman describes two events which he surmises could be construed as involving "favors" to him from the NSJV principal. The first involves tickets to the annual Miners and Trappers Ball, which the chairman describes as a popular Alaskan social function. According to the chairman, in 1985 or 1986, ticket purchases for the ball were limited to 10 per person. The individual from NSJV wanted to buy 20 tickets and asked the chairman to wait in line with him to purchase an additional 10 tickets. The chairman agreed, and in exchange was given two of the tickets, worth \$20 each, free of charge by the individual from NSJV. The second event occurred in 1988 when, according to the chairman, an individual from NSJV brought to the BLM office a few pounds of coffee which he had bought on a recent vacation to Costa Rica. The chairman states that he accepted the coffee, saying jokingly that it was in return for the coffee which members of NSJV had consumed during prior visits to BLM in connection with reviewing data on procurements in which NSJV was interested. Like the other three members of the evaluation board, the chairman states that neither these two incidents nor any others improperly influenced his evaluation of the proposals under the RFP.

ITECH argues that the events described in the chairman's affidavit constitute a violation of 18 U.S.C. § 201(c)(1), which prohibits gratuities to government employees, and are sufficient to taint the procurement and require termination of the award to NSJV. In addressing allegations of improper conduct such as the one raised by ITECH, it is not our function to determine whether the conduct at issue constitutes a criminal violation; the interpretation and enforcement of criminal statutes are primarily matters for the Department of Justice. Sterling Medical Associates, B-213650, Jan. 9, 1984, 84-1 CPD ¶ 60. Rather, our review focuses on whether the individuals involved in the alleged improper conduct exerted improper influence in the

procurement on behalf of the awardee. Rosser, White, Hobbs, Davidson, McClellan, Kelly, Inc.--Request for Reconsideration, B-224199.2, Mar. 20, 1987, 87-1 CPD ¶ 319. We examine the circumstances of the procurement and the involvement of the agency personnel who allegedly engaged in the improper conduct to determine if the award decision was improperly influenced. Id.

Here, BLM acknowledges that the group of people in Alaska trained to perform the services called for by the RFP is small and as a result personal relationships develop between the BLM employees and contractors, many of whom previously have worked for BLM. Mere inferences of improper conduct based on such personal relationships, however, are not sufficient to demonstrate that the award was improperly influenced. Pinkerton Computer Consultants, Inc., B-212499.2, June 29, 1984, 84-1 CPD ¶ 694. Further, in view of the relatively modest nature of the gratuities at issue and the circumstances under which they were given, we cannot conclude that acceptance of the items created such an appearance of improper conduct on the part of the chairman as to warrant concluding that the procurement was tainted. Moreover, there is nothing in the record to show that the relationship between NSJV and the chairman of the evaluation board in any way actually influenced the evaluation of proposals. Accordingly, we see no basis to conclude that the procurement was tainted, as ITECH argues.

Like ITECH, Ocean Technology also contends that its low technical evaluation and the award to NSJV were the result of favoritism toward former BLM employees. In support of its contention, Ocean Technology argues that at least half of all BLM survey contracts in Alaska since 1985 have been awarded to former BLM employees. Even assuming this figure is accurate, we find Ocean Technology's conclusion unpersuasive. In view of BLM's position, unchallenged by any of the protesters, that the community of experienced survey personnel in Alaska is small, the fact that many contracts have been awarded to former BLM employees does not demonstrate that these awards were the result of favoritism.

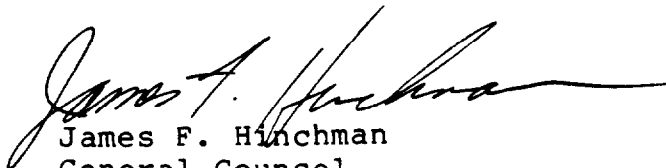
Finally, ADC contends that BLM's bias in favor of NSJV is shown by the agency's decision to allow NSJV to reassign three key employees from another ongoing BLM contract in order to include them in the personnel proposed under the RFP. According to BLM, the contracting officer approved the substitution of personnel on the ongoing contract because performance was substantially completed, the positions involved accounted for a relatively small portion of the technical evaluation, and the substituted personnel were well-qualified. ADC maintains that the qualifications and

experience of the substitutes are inferior to those of the original personnel. Even assuming ADC's assessment to be correct, however, BLM's decision to allow the substitution, standing alone, is not sufficient to show that the BLM officials were motivated by bias in favor of NSJV, particularly since the personnel involved accounted for only 5 percent of the technical evaluation.

ADC alleges without further elaboration that procurement-related information is "funnelled out" by BLM according to "key personnel at two previously successful companies." Such a bare allegation without more is clearly insufficient to demonstrate that any impropriety has occurred.

Since we find without merit the challenges by ADC and Ocean Technology to BLM's evaluation of their technical proposals and since the record does not show that the award to NSJV was the result of bias or other improper actions by BLM contracting officials, we deny the protests. However, in view of the small number of individuals involved with cadastral survey services in Alaska and the close relationships between BLM employees and offerors that may develop under those circumstances, we are by separate letter referring the protesters' allegations to the Inspector General of the Department of the Interior for such further review as he considers appropriate. Moreover, in view of the circumstances here, we believe that BLM must make a special effort to avoid any appearance of possible bias in the future.

The protests are denied.

  
James F. Hinchman  
General Counsel